

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

v.

ANDREW CANADAY,

Respondent,

Appellant.

DOCKET NUMBER WD77585

Date: December 8, 2015

Appeal from:
Jackson County Circuit Court
The Honorable Patrick W. Campbell, Judge

Appellate Judges:
Division Four: Alok Ahuja, Chief Judge, Presiding, Gary D. Witt, Judge and Kathleen A.
Forsyth, Sp. Judge

Attorneys:
Dora Fichter, Jefferson City, MO for respondent
Jeannette L. Wolpink, Kansas City, MO for appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI,

v.

ANDREW CANADAY,

Respondent,

Appellant.

WD77585

Jackson County

Following a bench trial, Andrew Canaday ("Canaday") was convicted in the Circuit Court of Jackson County of one count of statutory rape, one count of child molestation and one count of intentionally exposing another to the HIV virus. The trial court sentenced Canaday to life in prison on the first count and to fifteen years on each of the remaining counts, to run concurrently with the life sentence.

On appeal, Canaday argues that the trial court erred in overruling his motion for acquittal because (1) he was prejudiced when the court allowed the State to amend the factual basis for the child molestation charge after the close of evidence; and (2) there was insufficient evidence that he had sexual intercourse with the victim such that the findings of guilt as to the statutory rape and intentional HIV exposure charges were erroneous.

AFFIRMED IN PART; REVERSED IN PART

Division Four holds:

- (1) The trial court erred and Canaday was prejudiced when the trial court allowed the State to amend the factual basis for the child molestation charge after the close of all of the evidence. The charge as filed had alleged that Canaday committed the offense by placing his mouth on the victim's breast. After the close of all of the evidence, the State was improperly allowed to amend the charge to allege that Canaday committed the offense by touching the victim's vagina with his hand. Canaday properly objected to the amendment and explained how his planned defense was prejudiced by the amendment. The conviction and sentence as to that charge is reversed.

(2) There was sufficient evidence from which the finder of facts could conclude that Canaday had sexual intercourse with the victim such that the findings of guilt as to statutory rape and intentional HIV exposure were proven beyond a reasonable doubt. The convictions and sentences as to those charges is affirmed.

Before: Division Four: Alok Ahuja, Chief Judge, Presiding, Gary D. Witt, Judge and Kathleen A. Forsyth, Sp. Judge

Opinion by: Gary D. Witt, Judge

December 8, 2015

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